



5. Venue is properly laid in the Eastern District of Pennsylvania pursuant to 28 U.S.C. § 1391(b)(2).

### **BACKGROUND**

6. Hunter Roberts is a general contractor and construction manager on projects for various owners.

7. Hunter Roberts entered into an agreement (“Agreement”) with ACC OP (Chestnut, PA) LLC, 12700 Hill Country Blvd., Suite T-200, Austin, Texas 78738 (“Owner”) to construct two buildings comprising student housing and a retail facility on the campus of Drexel University, located at 32<sup>nd</sup> Street and Chestnut Street, Philadelphia, PA (“Project”).

8. Hunter Roberts entered into a subcontract with Berlin Steel dated December 14, 2011 (“Subcontract”), under which Berlin Steel agreed to perform steel and precast plank work (“Work”) for the Project. A copy of the Subcontract without attachments is attached as Exhibit “A.”

9. The initial price of the Subcontract was \$9,700,000.00 (“Subcontract Price”).

10. The Subcontract Price was adjusted through executed change order to \$10,842,002.02.

11. The basis of Hunter Roberts’ compensation under the Agreement with the Owner is a guaranteed maximum price (“GMP”), which caps the amount paid to Hunter Roberts and also provides that all savings under the GMP will be shared by Hunter Roberts and the Owner at 50% each.

12. Berlin Steel caused Hunter Roberts and the Owner to spend more money for construction of the Project. Thus, Hunter Roberts did not realize shared savings under the GMP and the Owner spent more than it otherwise would have spent on the Project. Berlin Steel,

therefore, is responsible to pay Hunter Robert's lost shared savings, and for the Owner's additional costs.

13. Further, Berlin Steel did not adhere to the Subcontract and violated industry practice in numerous ways, damaging Hunter Roberts.

14. On two separate occasions, Berlin Steel dropped steel columns that Berlin Steel was erecting on the building, both of which fell from elevated floors of the building to the ground, significantly damaging property. Luckily, no individuals were injured.

15. The first incident occurred on August 16, 2012, when Berlin Steel dropped a steel column from an elevated floor of the building, which struck a trailer located at the ground level. The steel column penetrated the roof of the trailer and proceeded to puncture the floor of the trailer.

16. The second incident occurred on November 14, 2012. Again, while erecting steel on the Project, Berlin Steel inappropriately removed bolts from a free-standing steel column, causing the column to fall 13 stories to the street. The impact of the column destroyed the structure at ground level that had been constructed over the sidewalk to protect pedestrians.

17. Both incidents caused a shutdown of work on the Project, while an investigation was conducted and safety procedures implemented. This shut down caused a delay to the progress of the work that Hunter Roberts had to recover through the expenditure of unanticipated additional costs. These incidents also caused Hunter Roberts to incur additional costs for administration, management and additional safety personnel on the Project.

18. Berlin Steel also failed to perform its work in accordance with its obligations under the Subcontract and delayed the overall progress of the work on the Project by, among other things: failing to perform its work in accordance with the project schedules and at the

direction of Hunter Roberts; failing to provide adequate personnel for the Project; failing to provide adequate material and equipment; and failing to sequence its work as required. Hunter Roberts incurred unanticipated additional costs to recover from those delays in order to complete the Project on time, including but not limited to paying other subcontractors to accelerate their work such as working a second shift, adding personnel and supervision, and incurring additional administrative costs.

19. Berlin Steel's failure to perform its work in accordance with the Subcontract and industry standard also caused Hunter Roberts to incur the following additional costs:

Description	Pending CO #	Amount
Tower crane concrete slab infills on floors 9 and 14	013	\$24,767.00
RFI 537 Stair #1 pressurization shaft creating revised drywall shaft at fire access lobby	040	\$9,773.79
Pumping concrete to the 9 <sup>th</sup> and 14 <sup>th</sup> floors for the tower crane tie in rather than using the tower crane	016	\$6,400.00
Repair 32 <sup>nd</sup> street scaffolding on 11/15/12 due to damage from falling steel	061	\$2,356.26
Healy Long Jevlin Tickets to pour concrete infills on steel angles at stairs shafts and elevator openings floors 4-9, tickets 3209, 3381, 3210	026	\$10,903.00
Layout of HVAC plank openings for openings to be cut in the field	065	\$3,012.00
Healy Long Jevlin ticket 3099 for concrete infill on street angles, 1 <sup>st</sup> and 2 <sup>nd</sup> floors	059	\$3,230.00
Repair framing removed for repair on steel, ticket 33228	062	\$1,900.74
Pour and patch infills around crane and stairway, ticket 003384	060	\$2,784.00
Patch SOFP due to steel repairs, spray applied, invoices 47-60	053	\$33,863.00
Cost to sand and prime precast connections		\$5,000.00
Reroute CWS/R to maintain 3" clear per response to RFI 790 due to added steel for tower crane tie-in	063	\$1,719.00
Additional SOFP patching on ground floor		\$15,000.00



Description	Pending CO #	Amount
Provide standby electrician for Sunday 1/20/13 and 2/3/13	055	\$1,652.00
Universal COR 20 extra costs for 300 ton crane sitting idle due to west bar steel/plank not being complete	056	\$11,532.00
Cost for use of hoist 10/1/12 through 2/7/13	058	\$47,400.00
Remove shaft wall to install elevator tubes on 18 <sup>th</sup> floor	064	\$2,122.00
Ran elevator car for ironworkers on 3/2/13		\$1,500.00
Provide extra rail backing and re-build, patch shaft due to steel being out of pumb	068	\$27,678.00
Cutting rebar out of the duct riser slab penetrations cut in the field by Berlin	066	\$2,253.00
Additional tickets beyond PCI 448 for layout of penetrations in the precast plank not poured into plank, tickets 2282, 2299, 0988, 0990, 3590, 3653 and 3619	067	<u>\$5,476.00</u>
<b>TOTAL</b>		<b>\$220,321.79</b>

20. Berlin Steel inappropriately sent the Owner a Notice of Intent to Lien, which damaged Hunter Roberts.

### **COUNT I**

#### **Breach of Subcontract**

21. Hunter Roberts incorporates by reference all allegations set forth previously, as fully stated herein.

22. Berlin Steel had an obligation under the Subcontract to perform its work in a manner that did not cause Hunter Roberts and the Owner additional costs for construction of the Project.

23. Berlin Steel breached the Subcontracts as set forth in more detail above by, among other things: failing to erect steel without dropping steel columns; failing to complete its work in accordance with the schedule or as directed by Hunter Roberts; failing to perform its

work without causing Hunter Roberts to incur additional costs; and initiating a lien against the Project.

24. As a consequence of Berlin Steel's breaches of the Subcontract, Hunter Roberts suffered damages as described above, including additional costs of construction, supervision, administration, and lost opportunity to share in cost savings on the Project.

25. Hunter Roberts fulfilled its obligation under the Subcontract.

WHEREFORE, Hunter Roberts demands judgment against Berlin Steel for all damages suffered by Hunter Roberts, costs of suit, interest, attorneys' fees, other statutory damages, and such other relief as this Court deems appropriate.

## **COUNT II**

### **Negligence**

26. Hunter Roberts incorporates by reference all allegations set forth previously, as fully stated herein.

27. Berlin Steel owed a duty to Hunter Roberts to perform its work in accordance with industry standards as describe in more detail above.

28. Berlin Steel breached its duty to Hunter Roberts by not performing its work in accordance with industry standard as described in more detail above.

29. As a direct and proximate result of Berlin Steel's breach of its duty to Hunter Roberts, Hunter Roberts sustained damages.

WHEREFORE, Hunter Roberts demands judgment against Berlin Steel for all damages suffered by Hunter Roberts, costs of suit, interest, attorneys' fees, other statutory damages, and such other relief as this Court deems appropriate.

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